

Rule 3-201.02. Court Commissioner Conduct Committee.

Intent:

To establish a procedure for the review of complaints filed against court commissioners.

Applicability:

This rule shall apply to all trial courts of record.

Statement of the Rule:

(1) Court Commissioner Conduct Committee.

~~(1)(A) The Council shall appoint a committee of three judges and two lawyers to investigate formal complaints against court commissioners. The Council shall designate one member as chair. The judges shall reside in different judicial districts from each other. The lawyers shall reside in different judicial districts from each other. The Court Commissioner Conduct Committee shall consist of the following members:~~

~~(1)(A)(i) as chair, the Court of Appeals member of the Ethics Advisory Committee;~~

~~(1)(A)(ii) two presiding judges from judicial districts with a court commissioner;~~

~~(1)(A)(iii) the immediate past Bar Commissioner on the Judicial Council;~~

~~(1)(A)(iv) the chair of the Supreme Court Advisory Committee on Rules of Professional Conduct.~~

~~(1)(B) Committee members shall not be Council members. Committee members shall serve six year terms of office. The terms of office shall be staggered so that no more than two expire in one year.~~

~~(1)(C)–(1)(B)~~ Circumstances which require recusal of a judge shall require recusal of a Committee member from participation in Committee action. If the chair is recused, a majority of the remaining members shall select from among themselves a chair pro tempore. ~~The chair shall replace a recused member with a judge or lawyer of the same judicial district as the recused member. The composition of the Committee shall remain as provided in paragraph (1)(A). If a presiding judge is recused, the chair shall temporarily appoint a presiding judge of another judicial district with a commissioner. If the immediate past Bar Commissioner on the Judicial Council is recused, the chair shall temporarily appoint another past Bar Commissioner on the Judicial Council. If the chair of the Supreme Court Advisory Committee on Rules of~~

**Effective November 1, 2004**

Professional Conduct is recused, the chair shall temporarily appoint another member of the Supreme Court Advisory Committee on Rules of Professional Conduct.

(2) Informal complaint. An informal complaint against a court commissioner may be filed with the presiding judge of the court the court commissioner serves. The presiding judge shall conduct such investigation and take such corrective action as warranted by the complaint.

(3) Formal complaint.

(3)(A) A formal complaint against a court commissioner shall be in writing and filed with the presiding officer of the Council. The presiding officer shall refer the complaint to the committee and provide a copy of the complaint to the court commissioner and to the presiding judge of the court the commissioner serves.

(3)(B) All proceedings and materials related to a formal complaint shall be kept confidential.

(3)(C) The chair or the committee shall dismiss a frivolous complaint. The chair or the committee shall dismiss a complaint found to raise only issues of law or fact for which a remedy is the review of the case by the trial court judge or by an appellate court. The chair of the committee shall provide notice of and basis for the dismissal to the complainant, the presiding judge and the commissioner.

(3)(D) The committee may investigate a complaint that is not dismissed under paragraph (3)(C). This investigation shall be conducted to determine whether dismissal or a hearing is appropriate.

(3)(E) The committee may request that the state court administrator appoint a staff person within the administrative office to perform any investigation and make any presentations to the Committee or the Council.

(3)(F) Hearings of the Court Commissioner Conduct Committee.

(3)(F)(i) The hearings of the committee shall be closed to the public. The committee shall interview the complainant, the court commissioner, and any witnesses determined to have relevant information. The commissioner has the right to testify. The commissioner and complainant may be present at any hearing of the committee and have the assistance of counsel. The commissioner may present and examine and cross-examine witnesses. Testimony shall be presented under oath and a record of the proceedings maintained. The commissioner may obtain a copy of the record upon payment of any required fee.

**Effective November 1, 2004**

(3)(F)(ii) The committee shall make written findings concerning the merits of the complaint and provide a copy of the findings to the complainant, the court commissioner, and the presiding judges of the court the commissioner serves.

(3)(G) If the committee finds the complaint to have merit, the committee shall recommend to the Council that a sanction be imposed under CJA Rule 3-201(6). The committee shall dismiss any complaint found to be without merit.

(3)(H) Council review.

(3)(H)(i) Complaints dismissed without a hearing. The chair of the committee shall report to the Council not less than annually on the committee's work including a general description of any complaint dismissed without a hearing.

(3)(H)(ii) Complaints with a committee hearing.

(3)(H)(ii)(a) The Council shall review the record of the committee hearing to determine the correct application of procedures and to determine the sanction to be imposed.

(3)(H)(ii)(b) The complainant, commissioner or presiding judges of the districts the commissioner serves shall file any objections to the committee's findings in writing with the Council. No person is entitled to attend the Council meeting at which the complaint is reviewed.